

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

employment-related noise exposure during his time as a machinist for the Philadelphia Naval Shipyard (PNSY). He stated that he was required to work around various machines, motors, tools, and pneumatic devices which exposed him to hazardous noise. Appellant was required to be on ships and around machinery on a full-time basis during his work hours. He first became aware of his condition on January 1, 2011 and of its relationship to his federal employment on January 28, 2011. On the reverse side of the form, appellant's supervisor indicated that appellant left the PNSY in 1993 and was currently working for the U.S. Postal Service (USPS).

By letter dated August 31, 2011, OWCP requested additional factual information from appellant. Appellant was requested to provide information regarding his employment history, when he related his hearing loss to conditions of employment, and all nonoccupational exposure to noise. OWCP also requested that he provide medical documentation pertaining to any prior treatment he received for ear or hearing problems. Appellant was afforded 30 days to submit this information.

In support of his claim, appellant submitted a June 9, 2011 report and audiogram from Caryn H. Bross, a certified audiologist. Ms. Bross stated that appellant had a significant history of noise exposure for the past 15 years and complained of tinnitus worse in the left ear. She recommended a hearing aid evaluation as audiometric testing revealed mild-to-moderate severe bilateral sensorineural hearing loss. The June 9, 2011 audiogram revealed the following decibel (dB) losses at 500, 1,000, 2,000, and 3,000 hertz (Hz): 20, 30, 35, and 55 for the right ear and 25, 30, 35, and 50 for the left ear.

By letter dated July 28, 2011, Dr. Harry Cantrell, a Board-certified otolaryngologist, reported his evaluation of appellant on July 1, 2011. He noted a history of bilateral hearing loss from working around loud noise for many years. On examination appellant was found to have moderately severe bilateral hearing loss which was consistent with noise exposure. Dr. Cantrell recommended hearing amplification.

By letter dated September 23, 2011, OWCP notified appellant that the employing establishment was unable to access his personnel file because he was currently working for another federal agency. It informed him that his current employing establishment must obtain his personnel records for the period he was employed by the shipyard and provide copies of his job description, dates of employment, and any medical records including audiograms within 30 days or the claim would be denied.

Appellant responded to OWCP's questionnaire, explaining that from April 1983 to July 1995 he worked as a machinist assigned to shop 31 at PNSY. During that time, he worked in the machine shop and on board various U.S. naval ships that were under repair. Appellant was exposed to noise from machines such as lathes, milling machines, and grinders without being provided hearing protection. He was also exposed to hazardous noise from testing of high pressure steam valves with noise above 130 dB, testing of ship horns, hand grinding of various metals, and noise from grinding, hammering, and welding. Appellant reported no prior noise exposure and no hobbies which exposed him to loud noise. His current employment as a mail carrier did not expose him to noise other than from barking dogs and slamming mailbox lids. Appellant reported that he had no prior hearing issues until he worked at PNSY.

By decision dated February 1, 2012, OWCP denied appellant's claim, finding that he failed to establish exposure to employment-related noise.

By letter dated February 6, 2012, appellant, through counsel, requested a hearing before the Branch of Hearings and Review.

By decision dated April 12, 2012, the Branch of Hearings and Review vacated the February 1, 2012 decision finding that OWCP failed to make contact with appellant's current employing establishment and improperly placed the burden on appellant to secure evidence within the possession of the employing establishment. It remanded the case to OWCP to issue a development letter to the current employing establishment and following any further development deemed necessary, issue a *de novo* decision on the claim for hearing loss and as to whether the claim was timely filed.

By letter dated May 10, 2012, OWCP requested that the current employer provide a copy of appellant's personnel records for the period he was employed at the employing establishment from April 1983 to July 1995.

Forms SF-50, notifications of personnel action, were received noting appellant's employment as a machinist, beginning May 1, 1983.

By letter dated August 28, 2012, the employing establishment argued that the claim was not timely filed. It stated that there was no evidence that the employing establishment was notified of appellant's hearing loss until the filing of the claim in 2011 with appellant's dates of employment running from April 1983 through July 1995.

By decision dated October 15, 2012, OWCP denied appellant's claim, finding that the evidence of record failed to establish that the claim was filed within three years of the date of injury or that his immediate supervisor had actual knowledge within 30 days of the date of injury. It noted that the date of injury was recorded as January 1, 2011 and the claim for compensation was filed on August 16, 2011. While appellant stated that he did not become aware of his binaural hearing loss until 2011, the medical records of file indicated that he had noise exposure and occasional tinnitus for the last 15 years.

By letter dated October 22, 2012 appellant, through counsel, requested a hearing before the Branch of Hearings and Review.

Hearing conservation data and audiograms dated May 4, 1983 through May 21, 1992 were submitted from PNSY.

By letter dated November 20, 2013, counsel argued that the PNSY audiograms revealed that he had normal hearing as evidenced by his October 19, 1983 audiogram and subsequent audiograms during his employment revealed the development of high frequency hearing loss.

By decision dated January 15, 2014, the Branch of Hearings and Review reversed the October 15, 2012 OWCP decision. It found that the claim was timely filed, as appellant had three years from January 28, 2011 or January 1, 2011, the date he knew his hearing loss was related to his employment, to file a timely claim.

In a decision dated January 28, 2014, OWCP denied appellant's hearing loss claim finding that he failed to establish fact or injury -- exposure to employment-related noise. It explained that he failed to provide a detailed description of all claimed sources of noise, how often he was exposed to each claimed source of noise, and for how long he was exposed to each claimed source of noise.

On February 3, 2014 appellant, through counsel, requested a hearing before the Branch of Hearings and Review.

By decision dated August 26, 2014, the Branch of Hearings and Review affirmed the January 28, 2014 OWCP decision, as modified, finding that appellant established exposure to occupational-related noise. It denied the claim, however, finding that the medical evidence of record failed to establish that his hearing loss was causally related to workplace noise exposure.

By letter dated and received May 11, 2015 appellant, through counsel, requested reconsideration of the August 26, 2014 decision. Counsel argued that an April 28, 2015 narrative report from Dr. David Bromberg, a Board-certified otolaryngologist, established appellant's employment-related hearing loss.

In an April 28, 2015 narrative report, Dr. Bromberg reported that he examined appellant on February 15, 2015. He noted that appellant worked as a machinist for PNSY for many years, did not use ear protection on a regular basis, and became aware of increased hearing loss and left ear tinnitus over the last several years. PNSY audiograms from 1983 and 1986 were reviewed which revealed consistently normal thresholds. A June 9, 2011 audiogram was also reviewed which showed mild-to-moderate severe sensorineural hearing loss bilaterally and elevated speech reception thresholds. An audiogram was repeated on February 5, 2015 which revealed findings consistent with those from June 9, 2011 with no change in hearing. Dr. Bromberg diagnosed bilateral sensorineural hearing loss much worse in the high frequencies than low. He explained that appellant's noise exposure at PNSY contributed to his hearing loss. However, appellant reported that because his hearing was significantly stable during his employment with significant clinical loss years later, direct causality between his employment at PNSY and his current hearing loss was difficult to confirm with any high degree of medical certainty.

By decision dated August 3, 2015, OWCP denied modification of the August 26, 2014 decision, finding that the medical evidence of record failed to establish hearing loss causally related to his employment-related noise exposure.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of FECA; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability or specific condition for which compensation is claimed is causally related to the

employment injury.<sup>2</sup> These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>3</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;<sup>4</sup> (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;<sup>5</sup> and (3) medical evidence establishing the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.<sup>6</sup>

Appellant has the burden of establishing by weight of the reliable, probative, and substantial evidence that his hearing loss condition was causally related to noise exposure in his federal employment.<sup>7</sup> Neither the condition becoming apparent during a period of employment, nor the belief of the employee that the hearing loss was causally related to noise exposure in federal employment, is sufficient to establish causal relationship.<sup>8</sup>

The medical evidence required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable certainty, and must be supported by medial rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.<sup>9</sup>

### ANALYSIS

It is not disputed that appellant was exposed to hazardous employment-related noise at the Philadelphia Naval Shipyard during his employment from April 1983 until July 1995. The issue is whether he established that he sustained employment-related hearing loss due to noise exposure during his federal employment. The Board finds that appellant failed to meet his burden of proof to establish that he developed bilateral hearing loss in the performance of duty as a PNSY machinist.<sup>10</sup>

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<sup>2</sup> Gary J. Watling, 52 ECAB 278 (2001); Elaine Pendleton, 40 ECAB 1143, 1154 (1989).

<sup>3</sup> Michael E. Smith, 50 ECAB 313 (1999).

<sup>4</sup> Michael R. Shaffer, 55 ECAB 386 (2004).

<sup>5</sup> Marlon Vera, 54 ECAB 834 (2003); Roger Williams, 52 ECAB 468 (2001).

<sup>6</sup> Beverly A. Spencer, 55 ECAB 501 (2004).

<sup>7</sup> Stanley K. Takahaski, 35 ECAB 1065 (1984).

<sup>8</sup> See John W. Butler, 39 ECAB 852, 858 (1988).

<sup>9</sup> I.J., 59 ECAB 408 (2008); Victor J. Woodhams, 41 ECAB 465 (2005).

<sup>10</sup> D.G., Docket No. 15-0702 (issued August 27, 2015).

It is generally accepted that hearing loss may result from prolonged exposure to noise levels above 85 dBs. Acoustic trauma may, however, result from dB levels before 85 dBs if exposure is sufficiently prolonged. OWCP, therefore, does not require that the claimant show exposure to injurious noise in excess of 85 dBs as a condition to approval of the claim.<sup>11</sup>

The record establishes that appellant was exposed to hazardous workplace noise exposure as a machinist from 1983 to 1995. OWCP must consider whether the employment-related noise exposure was sufficiently prolonged to result in acoustic trauma.<sup>12</sup> Such a question is medical in nature and should be resolved by a Board-certified otolaryngologist.

In support of his claim, appellant submitted a July 28, 2011 report from Dr. Cantrell who evaluated him on July 1, 2011. Dr. Cantrell diagnosed moderately severe bilateral hearing loss which was consistent with noise exposure, noting that appellant worked around loud noises for many years. He, however, did not provide a complete factual and medical background demonstrating his understanding of the nature and extent of the employment-related noise exposure.<sup>13</sup> He also failed to provide any medical rationale to support his opinion on causal relationship. As such, his report is insufficient to meet appellant's burden of proof.<sup>14</sup>

Appellant also submitted an April 28, 2015 report from Dr. Bromberg who evaluated appellant on February 15, 2015. Dr. Bromberg noted that appellant worked as a machinist for PNSY for many years, did not use ear protection on a regular basis, and became aware of increased hearing loss and left ear tinnitus over the last several years. PNSY audiograms from 1983 and 1986 were reviewed which revealed thresholds were consistently within normal limits. The next audiogram reviewed was a June 9, 2011 audiogram which showed mild-to-moderate severe sensorineural hearing loss bilaterally. An audiogram was repeated on February 5, 2015 which revealed findings consistent with those from June 9, 2011 and no change in hearing. Dr. Bromberg diagnosed bilateral sensorineural hearing loss much worse in the high frequencies than low. He opined that appellant's noise exposure at PNSY contributed to his hearing loss. However, because appellant's hearing was significantly stable during his employment with significant clinical loss years later, direct causality between his employment at PNSY and his current hearing loss was difficult to confirm with any high degree of medical certainty.

The Board finds that Dr. Bromberg's report is insufficient to establish employment-related hearing loss.<sup>15</sup> Dr. Bromberg did not note the various types of noise to which appellant was exposed and there is no indication that he was provided information pertaining to noise dosimetry data as he made no reference to the duration and levels of hazardous noise exposure.

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<sup>11</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.8(a)(1) (October 1990).

<sup>12</sup> *Eufrosino T. Torrado*, Docket No. 95-1208 (issued February 14, 1997).

<sup>13</sup> A physician's opinion on the issue of causal relationship must be based on a complete factual and medical background. *Steven B. Saleh*, 55 ECAB 169 (2003).

<sup>14</sup> A rationalized medical opinion is expressed in terms of a reasonable degree of medical certainty and explains the nature of the relationship between the diagnosed condition and the specific employment factors. *Id.*

<sup>15</sup> *M.E.*, Docket No. 14-1249 (issued October 22, 2014).

Given that he was not provided pertinent information pertaining to appellant's hazardous noise exposure, his opinion on the cause of his hearing loss is of limited probative value.<sup>16</sup>

Moreover, Dr. Bromberg failed to provide a causal connection of appellant's current audiological findings compared to the PNSY audiograms and hearing conservation data submitted from 1983 through 1992. He reviewed audiograms from 1983 and 1986, when appellant first began work as a machinist. The next audiogram reviewed was from 2011 and it is unclear why Dr. Bromberg did not review audiometric testing from the end of appellant's employment at the PNSY. The record establishes that appellant was exposed to hazardous workplace noise exposure from 1983 to 1995 yet Dr. Bromberg failed to explain how this hazardous noise exposure contributed to his hearing loss.<sup>17</sup> Dr. Bromberg further stated that because appellant's hearing was significantly stable during his employment, with significant clinical loss years later, direct causality between his employment at PNSY and his current hearing loss was difficult to confirm with any high degree of medical certainty. His opinion, therefore, that the work-related noise exposure contributed to appellant's hearing loss, is equivocal in nature.<sup>18</sup> Medical opinions that a condition could be causally related to employment are speculative and therefore of diminished probative value.<sup>19</sup> The Board finds that Dr. Bromberg did not adequately address how the specific factors of appellant's federal employment, based upon an accurate employment history, caused or contributed to his hearing loss. Dr. Bromberg's opinion is couched in speculative terms, not fully rationalized, and of limited probative value.<sup>20</sup> Thus, his report is insufficient to establish work-related hearing loss.

While the record contains other audiometric results, none were accompanied by a physician's rationalized medical opinion addressing how appellant's employment-related noise exposure caused or aggravated any hearing loss. OWCP is not required to rely on this evidence in determining the degree of his hearing loss because it does not constitute competent medical evidence and therefore is insufficient to satisfy appellant's burden of proof.<sup>21</sup>

An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.<sup>22</sup> In the instant case, the record is without rationalized medical evidence establishing a causal relationship between appellant's occupational

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<sup>16</sup> *F.H.*, Docket No. 14-268 (issued July 2, 2014); *A.D.*, 58 ECAB 149 (2006).

<sup>17</sup> The Board notes that an employee is not required to prove that occupational factors are the sole cause of his claimed condition. If work-related exposures caused, aggravated, or accelerated appellant's condition, he is entitled to compensation. See *Beth P. Chaput*, 37 ECAB 158, 161 (1985); *S.S.*, Docket No. 08-2386 (issued June 5, 2008).

<sup>18</sup> *A.B.*, Docket No. 06-1829 (issued February 22, 2007).

<sup>19</sup> *C.C.*, Docket No. 08-1160 (issued October 14, 2008).

<sup>20</sup> *L.P.* Docket No. 14-1360 (issued October 29, 2014).

<sup>21</sup> *Joshua A. Holmes*, 42 ECAB 231, 236 (1990).

<sup>22</sup> *D.D.*, 57 ECAB 734 (2006).

noise exposure and his bilateral hearing loss. Thus, appellant has failed to meet his burden of proof.<sup>23</sup>

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

### **CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish bilateral hearing loss causally related to factors of his federal employment.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the August 3, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 27, 2016  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>23</sup> See *R.S.*, Docket No. 14-1995 (issued February 25, 2015).